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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

In re L.L., a Person Coming Under
the Juvenile Court Law.

CONTRA COSTA COUNTY
CHILDREN AND FAMILY
SERVICES BUREAU,

Plaintiff and Respondent,

v.

L.L. et al.,

Defendants and Appellants.

A158581

(Contra Costa County
Super. Ct. No. J18-00846)

Appellants Leroy L. (Father) and J.T. (Mother) appealed from an order terminating their parental rights to their baby boy, L.L. They argue that respondent Contra Costa County Children and Family Services Bureau (Bureau) failed to conduct an adequate inquiry under the Indian Child Welfare Act of 1978 (25 U.S.C. § 1901 et seq., ICWA). We disagree and affirm.

I.
FACTUAL AND PROCEDURAL
BACKGROUND

L.L. came to the attention of the Bureau shortly after he was born in September 2018 when both he and Mother tested positive for drugs. The Bureau filed a dependency petition less than a week after L.L.'s birth alleging that he faced a substantial risk of harm because of Mother's inability to care for him. (Welf. & Inst. Code, § 300, subd. (b).)¹ Mother reported to the Bureau that she had no known Indian ancestry.

Father was not present during the social worker's first interviews with Mother, and the Bureau was unable to locate him. During a meeting with Mother at the maternal grandmother's home, the social worker asked for Father's contact information. Mother reported that Father did not have a mobile phone, that the only way to reach him was at their shared home residence, and that "he comes and goes randomly at their common address." When social workers first went to the home, Father was not there, but someone who introduced himself as his brother was.

The Bureau ultimately located Father, who completed a parental notification of Indian status form (ICWA-020) that was filed the day after the dependency petition was filed. Father reported that he may have Indian ancestry through the Apache tribe, and he provided the name of a maternal great-grandfather. Father also appeared at the detention hearing, as did someone who described himself as "like an uncle, close," on Father's side. The juvenile court asked whether Father could provide the birthday of the maternal great-grandfather listed on Father's ICWA-020 form, but Father stated he did not know. The court also asked if there were other family

¹ All further statutory references are to the Welfare and Institutions Code.

members who might have that information, and Father said, “Yes.” The court explained to Father that the Bureau would need that information to determine whether L.L. was covered by ICWA, and Father again responded, “Yes.” The juvenile court ordered L.L. detained.

The juvenile court sustained the petition at a jurisdiction hearing in October 2018. The Bureau stated in a disposition report filed later that month that it had “made many efforts to contact [Father] in order to complete the form Notice of Child Custody Proceedings for Indian Child (ICWA 030).” The Bureau sent Father a letter about a scheduled meeting, but he failed to appear. It also called him three times and left messages that were not returned. The Bureau also mailed Father an ICWA-030 form, but Father “made no efforts to contact the Bureau and cooperate with sharing information regarding his Indian Ancestry.”

Neither parent was present at the disposition hearing in late October. The juvenile court adjudged L.L. a dependent child, ordered reunification services for the parents, and scheduled a review hearing for April 2019.

In March 2019 Father reported he had Sioux heritage but that he could not provide a band or location. The Bureau in May sent notice of the proceedings to several Sioux and Apache tribes and to the Bureau of Indian Affairs. No tribe indicated that L.L. was a member or eligible for membership.

The parents visited, albeit somewhat inconsistently, with L.L. but generally failed to engage in their case plans. The Bureau recommended in advance of the six-month review hearing that the parents’ reunification services be terminated and that the matter be set for a selection-and-implementation hearing under section 366.26.

Both parents were present at the review hearing held in June 2019. County counsel provided ICWA documentation to the court but stated he was not prepared for a hearing on ICWA compliance because the Bureau was still waiting for responses from the tribes. The juvenile court concluded that the parents had not engaged in services and had “done absolutely nothing that makes it remotely likely, much less substantially probable” that L.L. would be returned to his parents even if further services were offered. The court terminated reunification services and scheduled a selection-and-implementation hearing.

Before the scheduled hearing, the Bureau filed further evidence of compliance with ICWA. At the start of the hearing in October 2019, county counsel asked the juvenile court to make an ICWA finding. Without objection, the juvenile court concluded that ICWA did not apply. The juvenile court terminated parental rights and selected adoption as the permanent plan for L.L. Both parents appealed.

II. DISCUSSION

The parents’ sole argument on appeal is that the Bureau’s compliance with the inquiry and notice provisions of ICWA is incomplete, but they are mistaken.

The Bureau contends, based on the Legislature’s 2018 amendments to the state’s ICWA-related statutes, that there was no duty to provide Indian tribes with notice of the proceedings. An Indian child is a child who is a member of an Indian tribe or eligible for membership and is the biological child of a member of an Indian tribe. (§ 224.1, subd. (b).) Section 224.3, subdivision (a), states that the duty to provide notice to Indian tribes applies only when one “knows or has reason to know [under section 224.2, subdivision (d)] that an Indian child is involved.” Section 224.2,

subdivision (d), now provides that there is reason to know an Indian child is involved under any of the following circumstances: “(1) A person having an interest in the child . . . informs the court that the child is an Indian child. [¶] (2) The residence or domicile of the child, the child’s parents, or Indian custodian is on a reservation or in an Alaska Native village. [¶] (3) Any participant in the proceeding, officer of the court, Indian tribe, Indian organization, or agency informs the court that it has discovered information indicating that the child is an Indian child. [¶] (4) The child who is the subject of the proceeding gives the court reason to know that the child is an Indian child. [¶] (5) The court is informed that the child is or has been a ward of a tribal court. [¶] (6) The court is informed that either parent or the child possess an identification card indicating membership or citizenship in an Indian tribe.” As recently explained in *In re Austin J.* (2020) 47 Cal.App.5th 870, 884–885: “This definition . . . replaced a definition under which the court would have a ‘reason to know’ that a ‘child is an Indian child’ based merely upon ‘information suggesting the child is a member of a tribe or eligible for membership in a tribe or one or more of the child’s biological parents, grandparents, or great-grandparents are or were a member of a tribe.’ [Citations.] Cases relying on such language are no longer controlling or persuasive on this point.”

The Bureau argues that there was no duty to inquire further because, under the current statutes, Father provided insufficient information to indicate that L.L. was an Indian child. Father counters that the Bureau was obligated to ask for additional information from his family members. Even assuming that a duty of further inquiry was triggered here, we do not find remand to be appropriate.

Father acknowledges that the Bureau “made a number of efforts to comply” with ICWA and that it “sent out numerous notices to a variety of Indian groups.” But he faults the Bureau for not including more information about Father and his relatives on those notices—information he was asked to provide but did not. He further contends that there were “a number of paternal relatives [who] were in the area and could have been asked” for further information about possible Indian heritage. With the possible exception of someone who described himself at the detention hearing as “like an uncle, close,” it does not appear that any paternal relatives were involved in proceedings below. Father points to statements in the detention/jurisdiction report that he and Mother lived with a paternal aunt, and claims a social worker should have gone to the home to ask the aunt for additional information. But that same report indicates that two social workers did visit the home, and they were greeted by someone who identified himself as a paternal uncle. Father criticizes the Bureau for not asking the uncle for biographical data, but that may have been in part because the workers smelled marijuana when the uncle opened the door, and the uncle slurred his speech and appeared to be in “an altered mental status” with bloodshot, droopy, and yellow eyes. True, Father has 14 adult children, one of whom, a female, attended a visitation session. But she was attending the visitation session as an “assistant,” said the visit was “a little awkward,” and left when Father ended the session after 25 minutes.

In sum, the record reveals that the Bureau tried several times to get more information from Father, who was often unresponsive and hard to locate, and notified several tribes of the proceedings based on what little information Father provided. It is unclear what else the Bureau could have

done here or what purpose remand would serve, especially given the current law and what tenuous information Father originally provided.

III.
DISPOSITION

The order terminating the parental rights of Mother and Father is affirmed.

Humes, P.J.

WE CONCUR:

Margulies, J.

Sanchez, J.

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